

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Christopher M. Klein

Bankruptcy Judge

Sacramento, California

**April 26, 2022 at 1:30 p.m.**

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1.	<a href="#">21-22614</a> -C-13	HENRY REED	MOTION TO MODIFY PLAN
	<a href="#">JNV</a> -4	Jason Voghelpohl	3-28-22 [ <a href="#">110</a> ]

DEBTOR DISMISSED: 4/8/22

**Final Ruling:** No appearance at the April 26, 2022 hearing is required.

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The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 29 days' notice was provided. Dkt. 114.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

<p><b>The Motion to Confirm is denied as moot.</b></p>
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A review of the docket shows the case was dismissed on April 8, 2022. Therefore, this Motion is denied as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm filed by the debtor, Henry Reed, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied as moot.

**April 26, 2022 at 1:30 p.m.**

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2. [17-25125](#)-C-13 JESSE/REBECCA KESLER  
[TLA](#)-5 Thomas Amberg

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF AMBERG HARVEY  
ATTORNEYS AT LAW FOR THOMAS L.  
AMBERG, DEBTORS ATTORNEY(S)  
3-25-22 [[51](#)]

**Tentative Ruling:**

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. Notice of 21 days is required if fees are greater than \$1,000. FED. R. BANKR. P. 2002(a)(6). The Proof of Service shows that 32 days' notice was provided. Dckt. 56.

**The Motion for Allowance of Professional Fees is Granted.**

Counsel for the debtor filed this Motion seeking additional compensation, beyond the fixed fee approved in connection with plan confirmation pursuant to Local Bankruptcy Rule 2016-1(c), for substantial and unanticipated work performed.

Fees are requested for the period May 20, 2020, through March 25, 2022. Applicant requests fees in the amount of \$3,300.

**DISCUSSION**

The unique facts surrounding the case, including representing the debtor without having received any prior fees for selling a home on shortened time and purchasing a new home on shortened time, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of \$3,300 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Thomas L. Amberg, Jr. ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Applicant is allowed the following fees and expenses as a professional of the Estate:

Applicant, a professional employed by the Chapter 13 debtors, Jesse Kesler and Rebecca Kesler,

Fees in the amount of \$3,300.00,

as the final allowance of fees pursuant to 11 U.S.C.  
§ 330 as counsel for Debtor.

**IT IS FURTHER ORDERED** that the Chapter 13 trustee is authorized to pay the fees allowed by this Order from the available Plan funds in a manner consistent with the order of distribution in a Chapter 13 case.

3. [22-20325](#)-C-13 JOSE HERNANDEZ  
[KL-1](#) Peter Macaluso

OBJECTION TO CONFIRMATION OF  
PLAN BY WILMINGTON SAVINGS FUND  
SOCIETY, FSB  
3-22-22 [[25](#)]

Thru #4

**Tentative Ruling:**

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 35 days' notice was provided. Dkt. 28.

**The Objection to Confirmation of Plan is sustained.**

Creditor, Wilmington Savings Fund Society, FSB ("Creditor") opposes confirmation of the Chapter 13 plan on the basis that:

1. The plan does not account for pre-petition arrearage of the creditor's claim of \$174,107.39
2. The plan is infeasible because the plan payments do not include the arrearage.

**DEBTOR'S OPPOSITION**

Debtor filed an Opposition on April 5, 2022. Dkt. 33. Debtor contends that the loan modification agreement that was in place pre-petition is still operable even though the debtor never made a payment and was in default of the agreement.

**DISCUSSION**

The plan at Section 3.02 provides that Creditor's Proof of Claim, *and not the plan*, determines the amount and classification of a claim.

Notwithstanding whether the plan provides for the prepetition arrearage as Creditor argues, the debtor has not carried his burden to show the plan is adequately funded. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

That is reason to deny confirmation. Therefore, the Objection is sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by Wilmington Savings Fund Society, FSB, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is sustained.

4. [22-20325](#)-C-13 JOSE HERNANDEZ  
[RDG](#)-1 Peter Macaluso

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
4-4-22 [[29](#)]

**Tentative Ruling:**

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 22 days' notice was provided. Dkt. 32.

**The Objection to Confirmation of Plan is sustained.**

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. The plan is not feasible because the plan provides for arrears that are less than the proof of claim filed by a Class 1 claimant.
2. Debtor has failed to provide all requested information to the Trustee, including profit and loss statements of debtor's business, proof of insurance for business, and 2020 State income tax returns.
3. The attorney's fees provided for in the plan are different than that provided for on the Debtor's Disclosure of Compensation of Attorney form.
4. Debtor's Schedule I is not consistent with the information testified to at the 341 meeting, and the debtor has not amended his schedules.
5. Debtor's plan fails the liquidation test because the debtor can pay the general unsecured creditors 100% plus interest at the Federal Judgment Rate of .098%.

**DISCUSSION**

The plan at Section 3.02 provides that Creditor's Proof of Claim, *and not the plan*, determines the amount and classification of a claim.

Notwithstanding whether the plan provides for the prepetition arrearage as Creditor argues, the debtor has not carried his burden to show the plan is adequately funded. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

The debtor has not provided the trustee with all required tax returns. 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The debtor has not filed all business documents including:

- A. Six months of profit and loss statements, or
- B. Proof of insurance or written statement that no such documentation exists.

11 U.S.C. §§ 521(e)(2)(A)(i), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1) & (a)(6).

That is reason to deny confirmation. Therefore, the Objection is sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, Russell Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is sustained.

5. [22-20364](#)-C-13 SALLY ALLEN  
[DVW](#)-1 Richard Jare

OBJECTION TO CONFIRMATION OF  
PLAN BY U.S. BANK, N.A.  
4-6-22 [[35](#)]

Thru #7

**No Tentative Ruling:**

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 20 days' notice was provided. Dkt. 37.

**The Objection to Confirmation of Plan is ~~xxxxxxx~~**

Creditor, U.S. Bank N.A. ("Creditor") opposes confirmation of the Chapter 13 plan on the basis that:

1. The plan is infeasible because debtor's current income is insufficient to make plan payments and the plan contemplates speculative future income as current income.
2. Debtor has filed prior cases and has not been able to cure her mortgage arrears on the creditor's claim.

**DISCUSSION**

At the hearing XXXXXX

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by Sally Janine Allen, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is xxxxxx

6. [22-20364](#)-C-13 SALLY ALLEN  
[RDG](#)-1 Richard Jare

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
4-5-22 [[31](#)]

**Tentative Ruling:**

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 20 days' notice was provided. Dkt. 34.

**The Objection to Confirmation of Plan is sustained.**

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that the plan proposes paying the value of the collateral securing a Class 2 claim without the court entering an order on the motion to value.

**DISCUSSION**

The plan proposes valuing the secured claim of Ovation Sales Finance Trust as a Class 2 claim. Before the court enters an order valuing that secured claim, the plan's feasibility is uncertain.

That is reason to deny confirmation. Therefore, the Objection is sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, Russell Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is sustained.



7. [22-20364](#)-C-13 SALLY ALLEN  
[RJ-1](#) Richard Jare

MOTION TO VALUE COLLATERAL OF  
OVATION SALES FINANCE TRUST  
3-31-22 [[25](#)]

**Tentative Ruling:**

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 26 days' notice was provided. Dkt. 30.

**The Motion to Value is granted.**

The debtor filed this Motion seeking to value the portion of CREDITOR's, Ovation Sales Finance Trust's ("Creditor") claim secured by the debtor's property, a 3 ton Package Heat Pump with 5kw strip, or a HVAC unit(the "Property").

The debtor has presented evidence that the replacement value of the Property at the time of filing was \$1,500. Declaration, Dckt. 29.

**DISCUSSION**

Upon review of the record, the court finds the value of the Property is \$1,500. There are no of senior liens encumbering the Property. Therefore, Creditor's secured claim is determined to be \$1,500. 11 U.S.C. § 506(a).

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Value Collateral and Secured Claim filed by the debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Ovation Sales Finance Trust's ("Creditor") secured by property commonly known as a 3 ton Package Heat Pump with 5kw strip, or a HVAC unit (the "Property") is determined to be a secured claim in the amount of \$1,500.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan.

8. [22-20367](#)-C-13 GREGORIO TOSTADO  
[RDG](#)-1 Mikalah Liviakis

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D GREER  
4-7-22 [[14](#)]

**Final Ruling:** No appearance at the April 26, 2022 hearing is required.  
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The trustee having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation was dismissed without prejudice, the matter is removed from the calendar, and the Chapter 13 Plan filed on February 18, 2022, is confirmed.**

Counsel for the debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Trustee for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

9. [19-20182](#)-C-13 WILLIAM/EILEEN VALENCIA MOTION FOR COMPENSATION BY THE  
[TLA](#)-4 Thomas Amberg LAW OFFICE OF AMBERG HARVEY FOR  
THOMAS L. AMBERG, JR., DEBTORS  
ATTORNEY(S)  
4-3-22 [[74](#)]

**Tentative Ruling:**

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice or 21 days if fees are greater than \$1,000. FED. R. BANKR. P. 2002(a)(6). The Proof of Service shows that 23 days' notice was provided. Dckt. 79.

**The Motion for Allowance of Professional Fees is Granted.**

Counsel for the debtor filed this Motion seeking additional compensation, beyond the fixed fee approved in connection with plan confirmation pursuant to Local Bankruptcy Rule 2016-1(c), for substantial and unanticipated work performed.

Fees are requested for the period August 14, 2021, through April 1, 2022. Applicant requests fees in the amount of \$3,000.

**DISCUSSION**

The unique facts surrounding the case, including representing the debtor without having received no prior fees for filing two motions to refinance, one of which was on shortened time, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of \$3,000 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Thomas L. Amberg, Jr. ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Applicant is allowed the following fees and expenses as a professional of the Estate:

Applicant, a professional employed by the Chapter 13 debtors, William Valencia II and Eileen Valencia,

Fees in the amount of \$3,000.00,

as the final allowance of fees pursuant to 11 U.S.C.  
§ 330 as counsel for Debtor.

**IT IS FURTHER ORDERED** that the Chapter 13 trustee is authorized to pay the fees allowed by this Order from the available Plan funds in a manner consistent with the order of distribution in a Chapter 13 case.

**No Tentative Ruling:**

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 40 days' notice was provided. Dkt. 19.

**The Objection to Confirmation of Plan is xxxxxxx**

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. 341 meeting has not been conducted.
2. Debtor has not provided copies of his most recent tax returns or payment advices.
3. Plan is not feasible because it proposes paying the value of the collateral securing the claim of the County of Sacramento without an order on an appropriate motion to value collateral and the plan fails to state the monthly dividend on the claim.
4. Plan relies on a monthly contribution from his son but has not filed a declaration from his son stating his ability and willingness to assist the debtor.

**DEBTOR'S OPPOSITION**

The debtor filed an Opposition on April 11, 2022. Dkt. 20. The debtor addressed the Trustee's opposition as follows:

1. Debtor attended the 341 meeting and believes he has satisfied the Trustee's issues.
2. Debtor filed a concurrent declaration stating that he has not filed tax returns in many years because he is disabled with limited income. He also states that he will provide pay advices to the Trustee.
4. The County has provided several lien releases and the debtor anticipates the County will file an amended claim in the amount of \$5,000, and so that a Motion to Value Collateral will not be needed.
5. His son has recently moved out of his house and no longer provides any financial contributions.

## **DISCUSSION**

At the hearing XXXXXX

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, Russell Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is xxxxxxxx.

11. [22-20288](#)-C-13 RYAN/MAXINE ENGLISH  
[CYB](#)-1 Candace Brooks

MOTION TO VALUE COLLATERAL OF  
SYNCHRONY BANK  
3-23-22 [[27](#)]

Thru #13

**Tentative Ruling:**

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 34 days' notice was provided. Dkt. 31.

**The Motion to Value is Granted.**

The debtors filed this Motion seeking to value the portion of CREDITOR's, Synchrony Bank's ("Creditor") claim secured by the debtor's property consisting of bedroom furniture including two bed frames and a dresser (the "Property").

The debtor has presented evidence that the replacement value of the Property at the time of filing was \$800. Declaration, Dkt. 29.

**DISCUSSION**

Upon review of the record, the court finds the value of the Property is \$800. There are no senior liens encumbering the Property. Therefore, Creditor's secured claim is determined to be \$800. 11 U.S.C. § 506(a).

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Value Collateral and Secured Claim filed by the debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Synchrony Bank ("Creditor") secured by two bedframes and a dresser(the "Property") is determined to be a secured claim in the amount of \$800, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan.

**Tentative Ruling:**

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 34 days' notice was provided. Dkt. 26.

**The Motion to Value is Granted.**

The debtor filed this Motion seeking to value the portion of Synchrony Bank's ("Creditor") claim secured by the debtor's property consisting of a couch and chair (the "Property").

The debtor has presented evidence that the replacement value of the Property at the time of filing was \$500.00. Declaration, Dckt. 24.

**DISCUSSION**

Upon review of the record, the court finds the value of the Property is \$500. There are no senior liens encumbering the Property. Therefore, Creditor's secured claim is determined to be \$500. 11 U.S.C. § 506(a).

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Value Collateral and Secured Claim filed by the debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Synchrony Bank ("Creditor") secured by property consisting of a couch and chair (the "Property") is determined to be a secured claim in the amount of \$500.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan.



**Tentative Ruling:**

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 35 days' notice was provided. Dkt. 21.

**The Objection to Confirmation of Plan is sustained.**

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. Plan may not be feasible because it proposes paying the value of the collateral securing the claims of Synchrony Bank without an order on appropriate motions to value collateral.
2. Plan is not feasible because the secured claim of Synchrony Bank even if valued at \$800 would take 97 months to pay off at the proposed interest rate and dividend amount.
3. Trustee has requested documentation regarding 401(k) loan repayments in order to determine if plan meets the projected disposable income test.
4. Trustee requests that debtor be required to report and damages awards received from personal injury causes of action and require the debtors to amend their schedules upon receipt of the awards.

**DISCUSSION**

The plan proposes valuing the secured claims of Synchrony Bank. Before the court enters an order valuing that secured claim, the plan's feasibility is uncertain.

The debtor has not demonstrated the plan is feasible because the plan terms require a longer payment period than what is proposed. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

The debtor has supplied insufficient information relating to the repayment of the 401(k) loan to assist the Chapter 13 Trustee in determining if the plan meets the projected disposable income test.

That is reason to deny confirmation. Therefore, the Objection is sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, Russell Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is sustained.